



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R09-OAR-2021-0426; FRL-8710-02-R9]

#### **Designation of Areas for Air Quality Planning Purposes; California; Eastern Kern, Sacramento Metro, and Western Nevada 2015 Ozone Nonattainment Areas; Reclassification to Serious**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is granting requests by the California Air Resources Board (CARB or “State”) to reclassify three nonattainment areas in California from “Moderate” to “Serious” for the 2015 ozone national ambient air quality standards (NAAQS). These three areas are herein referred to as the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas. In connection with the reclassification, the EPA is establishing deadlines for submittal of revisions to the Eastern Kern, Sacramento Metro, and Western Nevada portions of the California State implementation plan (SIP) to meet additional requirements for Serious ozone nonattainment areas.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0426. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional

availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Ben Leers, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4279, *leers.ben@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

## **Table of Contents**

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

### **I. Proposed Action**

On August 13, 2021, the EPA proposed to grant requests by the State of California to reclassify the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS.<sup>1</sup> Our August 13, 2021 proposed rule provides background information on the EPA’s promulgation of the 2015 ozone NAAQS and area designations, classifications, and reclassifications for the 2015 ozone NAAQS.

The proposed rule describes CARB’s requests for reclassification of the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS and the basis for our proposed approval of the requests. The proposed rule also describes the Serious area requirements applicable to the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas following the EPA’s approval of the voluntary reclassification requests and proposes a schedule for CARB to submit SIP revisions that address these requirements. Lastly, the proposed rule addresses the implications of the reclassification on

---

<sup>1</sup> 86 FR 44677.

the areas of Indian country geographically located within the borders of the Sacramento Metro nonattainment area. Please see the proposed rule for further detail concerning these topics.

In this document, we are taking final action to grant CARB's requests to reclassify the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas to Serious nonattainment for the 2015 ozone NAAQS. Pursuant to the reclassification, these areas will be required to attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than August 3, 2027. We are also taking final action to establish a schedule for CARB to submit SIP revisions addressing Serious area requirements and to submit revisions to the title V operating permit rules for the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas.

## **II. Public Comments and EPA Responses**

The EPA's proposed action provided a 30-day public comment period. During this period, we received no adverse comments and one comment in support of our proposed action. The comment letter is available in the docket for this rulemaking.

## **III. EPA Action**

Pursuant to CAA section 181(b)(3) and 40 CFR 51.1103(b), the EPA is granting a request by the State of California to reclassify the Eastern Kern, Sacramento Metro, and Western Nevada nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS. In connection with the reclassifications, the EPA is establishing a deadline of no later than August 3, 2022 (i.e., four years from the areas' date of initial designation as nonattainment for the 2015 ozone NAAQS) for the submittal of SIP revisions addressing the Serious area requirements applicable to each of these areas.<sup>2</sup> Under CAA section 301(a), we are also establishing August 3, 2022, as the deadline for the submittal of any corresponding revisions, or certifications, as appropriate, to the NSR and title V program rules that apply in the affected areas. We are establishing a deadline of

---

<sup>2</sup> As described in the proposed rule, these requirements include an attainment demonstration, reasonable further progress demonstration, reasonably available control measures, contingency measures, enhanced motor vehicle inspection and maintenance program, and clean fuel vehicle program. The proposed rule includes more information about these requirements and their applicability to each area. See 86 FR 44677, 44678.

November 29, 2023 (i.e., 24 months from the effective date of our reclassification of the areas to Serious) for the submittal of SIP revisions addressing the Serious area reasonably available control technology (RACT) requirements for each of these areas. Additionally, the EPA is establishing a deadline for implementation of Serious area RACT rules as expeditiously as practicable but no later than January 1, 2026.<sup>3</sup> Finally, as described in the proposed rule, CARB will be required to submit a transportation control demonstration by August 3, 2024, and every three years thereafter, and to submit transportation control measures as needed based on these demonstrations.<sup>4</sup>

#### **IV. Statutory and Executive Order Reviews**

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this final action is not a “significant regulatory action” and therefore is not subject to Executive Order 12866. With respect to lands under state jurisdiction, voluntary reclassifications under CAA section 181(b)(3) are based solely upon requests by the state, and the EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. For these reasons, this final action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

---

<sup>3</sup> Under 40 CFR 51.1312(a)(3)(ii), states must provide for implementation of RACT required pursuant to reclassification as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area’s new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline (whichever is earlier). Because ozone nonattainment areas in California have a year-round ozone season, the start of the attainment year ozone season associated with each area’s new attainment date is January 1, 2027. January 1 of the third year after the RACT SIP submittal deadline (as established in this final rule) is January 1, 2026.

<sup>4</sup> See 86 FR 44677, 44679.

In addition, I certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and that this final rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), because the EPA is required to grant requests by states for voluntary reclassifications, and such reclassifications in and of themselves do not impose any federal intergovernmental mandate, and because tribes are not subject to implementation plan submittal deadlines that apply to states as a result of reclassifications.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in Executive Order 13175 to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.” Four Indian tribes have areas of Indian country located within the boundaries of the Sacramento Metro ozone nonattainment area, and there are no areas of Indian country located in the Eastern Kern and Western Nevada ozone nonattainment areas. The EPA implements federal CAA programs, including reclassifications, in these areas of Indian country within the boundaries of the Sacramento Metro area consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. The EPA has concluded that this final rule might have tribal implications for the purposes of Executive Order 13175 but will not impose substantial direct costs upon the tribes, nor would it preempt tribal law. As discussed in section III of our August 13, 2021 proposed rule, this action does not affect the implementation of NSR or title V programs in these areas of Indian country, nor does it affect projects proposed in these areas of Indian country that require federal permits, approvals, or funding under the EPA’s

general conformity rule. None of the affected tribes will be required to submit an implementation plan as a result of this reclassification.

The EPA contacted tribal officials early in the process of developing this rulemaking to provide an opportunity to have meaningful and timely input into its development. On December 11, 2020, we sent letters to leaders of the four tribal governments representing the areas of Indian country in the nonattainment area offering government-to-government consultation and seeking input on how we could best communicate with the tribes on this rulemaking effort. No tribes requested government-to-government consultation on this action.

Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This reclassification action does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898.

This final action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the National Government and the states, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This final action does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This final rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health

or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation.

As this final rule establishes a deadline for the submittal of CAA required plans and information, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## **List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, National parks, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 22, 2021.

Deborah Jordan,  
*Acting Regional Administrator,*  
*Region IX.*



For the reasons stated in the preamble, the EPA amends part 81, chapter I, title 40 of the Code of Federal Regulations as follows:

**PART 81 – DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

**Subpart C – Section 107 Attainment Status Designations**

2. In § 81.305, the table entitled “California—2015 8-Hour Ozone NAAQS [Primary and Secondary]” is amended by revising the entries for “Kern County (Eastern Kern), CA”, “Nevada County (Western part), CA”, and “Sacramento Metro, CA” to read as follows:

§ 81.305 California.

\* \* \* \* \*

CALIFORNIA—2015 8-HOUR OZONE NAAQS  
[Primary and Secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
*	*	*	*	*
Kern County (Eastern Kern), CA		Nonattainment	<b>[Insert date 30 days after date of publication in the <i>Federal Register</i>]</b>	Serious.
Kern County (part):				
That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205 - the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land				

Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.						
*	*	*	*	*	*	*
Nevada County (Western part), CA		Nonattainment	[Insert date 30 days after date of publication in the Federal Register]	Serious.		
Nevada County (part):						
That portion of Nevada County, which lies west of a line, described as follows: Beginning at the Nevada-Placer County boundary and running north along the western boundaries of Sections 24, 13, 12, 1, Township 17 North, Range 14 East, Mount Diablo Base and Meridian, and Sections 36, 25, 24, 13, 12, Township 18 North, Range 14 East to the Nevada-Sierra County boundary.						
*	*	*	*	*	*	*
Sacramento Metro, CA		Nonattainment	[Insert date 30 days after date of publication in the	Serious.		

			<b><i>Federal Register</i></b>	
El Dorado County (part):				
All portions of the county except that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake.				
Placer County (part):				
All portions of the county except that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: Commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian, and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East Mount Diablo Base and Meridian, thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, Mount Diablo Base and Meridian, to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.				
Sacramento County.				
Solano County (part).				
That portion of Solano County which lies north and east of a line described as follows: Beginning at the intersection of the westerly boundary of Solano County and the 1/4 section line running east and west through the center of				

Section 34; Township 6 North, Range 2 West, Mount Diablo Base and Meridian, thence east along said 1/4 section line to the east boundary of Section 36, Township 6 North, Range 2 West, thence south 1/2 mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, Township 5 North, Range 1 West, thence east along a line common to Township 5 North and Township 6 North to the northeast corner of Section 3, Township 5 North, Range 1 East, thence south along section lines to the southeast corner of Section 10, Township 3 North, Range 1 East, thence east along section lines to the south 1/4 corner of Section 8, Township 3 North, Range 2 East, thence east to the boundary between Solano and Sacramento Counties.				
Sutter County (part).				
Portion south of a line connecting the northern border of Yolo County to the SW tip of Yuba County and continuing along the southern Yuba County border to Placer County.				
Yolo County.				
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria.				
United Auburn Indian Community of the Auburn Rancheria of California.				
Wilton Rancheria.				
Yocha Dehe Wintun Nation.				
* * * * *				

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>2</sup> Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*